UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/50/809
8 December 1995

ORIGINAL: ENGLISH

Fiftieth session
Agenda item 39

LAW OF THE SEA

Letter dated 7 December 1995 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to submit the text of a document related to navigation through the Turkish Straits.

I should be grateful if the text of the present letter and its annex could be circulated as a document of the fiftieth session of the General Assembly under agenda item 39.

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Ambassador
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ANNEX

Navigation through the Turkish Straits

1. The Turkish Straits, composed of the Sea of Marmara and the straits of Istanbul and of Çanakkale, are unique in many respects. These Straits, with a very narrow and winding shape, are one of the most hazardous, crowded, difficult and potentially dangerous waterways from the point of view of navigation in the world. Furthermore, they also bear unique physical, geographical, hydrological and oceanographic, and legal characteristics and complicated navigational conditions.

2. The Strait of Istanbul, which runs straight through the city of 12 million inhabitants, is approximately 31 kilometres long and 700 metres wide at its narrowest point. As it has several sharp turns, the ships are bound to alter course at least 12 times at these bends.

3. The Strait of Çanakkale is about 70 kilometres long, with a general width ranging from 1.3 to 2 kilometres. A very sharp course alteration is needed at its narrowest point.

4. The Sea of Marmara, between the Istanbul and the Çanakkale straits, is an internal body of water of Turkey, with a densely populated coastline, through which every transiting vessel has to pass.

5. The Turkish Straits are among the most crowded sea lanes in the world. Navigation in the Straits is highly congested by merchant traffic, coasters, fishing vessels and local traffic. This dense traffic includes the transport of noxious, dangerous and hazardous cargoes (011, liquified natural gas (LNG), liquefied petroleum gas (LPG), chemicals, other explosive and environmentally hazardous substances).

6. Approximately 50,000 vessels and more than 150 foreign warships transit the Straits per year. The number of local crossings by intra-city ferries and other shuttle boats is approximately 1,000 per day. This figure does not include the movement of transiting ships, leisure craft and fishing vessels. One and one half million people are daily on the move by way of sea crossing from one side to another in Istanbul.

7. Owing to many physical constraints, the Straits already present a bottleneck for maritime traffic. The risks and dangers associated with tanker navigation, maritime accidents and environmental catastrophes are further aggravated by the increase in density of traffic, tanker size and cargo capacity, as well as the nature of the cargo.

8. The Turkish Straits are among the very few straits which fall outside Part III of the United Nations Convention on the Law of the Sea, to which Turkey is not a party. As stipulated in article 35 (c) of the said Convention, passage through the Turkish Straits is regulated by a long-standing international agreement, namely the 1936 Montreux Convention regarding the Regime of Straits. The mode of passage which has been in effect in the Turkish Straits is clearly

different from the transit passage regime which has been developed throughout the Convention on the Law of the Sea.

9. Turkey is committed to the principle of freedom of navigation through the international straits. The essence of the freedom of navigation is that it should be exercised and implemented in safe conditions both for the navigators and for the inhabitants of the coasts bordering the Straits. Therefore, it is the right and indeed the responsibility of Turkey, as the only bordering country, to protect the public and the environment as well as to ensure the safety of navigation and the efficiency of traffic flow in the Straits. In line with this, since 1936 Turkey has on a number of occasions put into effect rules for regulating the traffic in the Straits, the most recent one prior to 1994 being the 1982 Istanbul Port Regulations.

10. With these considerations in mind, a set of regulations for maritime traffic in the Strait of Istanbul, the Sea of Marmara and the Strait of Çanakkale was promulgated on 11 January 1994 and entered into force on 1 July 1994.

11. All actions taken by Turkey have been completely in line with the Montreux Convention as well as the principles of general international law. The Montreux Convention, which affirms the freedom of navigation through the Turkish Straits, at the same time highlights Turkey's full sovereignty over the Straits area. The purpose of the new regulations is to ensure, to the extent possible, the safety of navigation while providing security to the inhabitants in and around the Straits area as well as the environment at the current dense level of maritime traffic.

12. Turkey, fully cognizant of its responsibilities, has submitted traffic separation schemes (TSS) in the Turkish Straits to the International Maritime Organization (IMO). The relevant bodies of IMO, the Subcommittee on Safety of Navigation and the Maritime Safety Committee (MSC), have fully discussed and adopted the TSS and a set of associated special rules and recommendations having relevance to the safe navigation of large vessels in the straits of Istanbul and Çanakkale, for the purposes of the TSS.

13. The special rules and recommendations adopted by MSC at its sixty-third session in May 1994 have a specific purpose and scope related to large vessels. The TSS and these associated rules and recommendations became effective on 24 November 1994. Both the TSS and the rules and recommendations were adopted by the nineteenth IMO Assembly, which took place between 13 and 24 November 1995.

14. IMO rules and recommendations are limited in scope. They are functional and pertain to specific situations with respect to the implementation of the TSS in the straits of Istanbul and Çanakkale.

15. On the other hand, the Regulations, which fall within national jurisdiction and therefore were not submitted to IMO, are comprehensive in scope and contain detailed provisions covering all aspects of traffic management in the whole area of the Straits, as well as rules to be applied to all vessels irrespective of their size.

16. In our times, it is not possible to consider, in the international law of the sea, the notion of "freedom of passage" independently from the notion of "safe navigation".

17. In addition, it is a fundamental principle of international law that the status of the maritime waters within a strait is in no way to be affected by the very fact that these waters are used for international navigation. The status of the Turkish Straits is such that they are internal waters. Turkey, taking into consideration the principles of freedom of passage and safety of navigation, as well as the spirit of the Montreux Convention, has enacted the Regulations for an orderly traffic management in the Turkish Straits.

18. Therefore, the Turkish Regulations are fully in line with applicable international law and freedom of navigation. The Regulations uphold the 1936 Montreux Convention and in no way infringe upon its provisions. They are not aimed at restricting or impairing the right of navigation in the Turkish Straits.

19. Had no regulations been adopted for passage through the Turkish Straits, accidents that could have happened not only would have endangered the densely populated urban areas and the environment, but also would have resulted in closure to traffic of the Straits for extended periods. That in turn would have impaired freedom of passage through the Straits.

20. Based on factual evidence, the record of implementation contains ample evidence to prove this.

21. Between 1 July 1994 and November 1995, 58,948 vessels passed through the Straits of Istanbul. One hundred sixty-four of them were large vessels, 15 per cent carrying dangerous cargo.

22. There has been a sharp and steady increase in the number of vessels using the Straits. In 1994, the daily average number of ships using the Straits was 77. This figure reached 90 vessels per day in 1994 and 132 vessels per day in the first 10 months of 1995. In October 1995, 4,166 vessels belonging to 57 countries used the Strait of Istanbul. The daily average was 134 vessels. Six hundred eleven of these were large vessels, 383 of which carried dangerous cargo, 207 being loaded tankers.

23. Despite the sharp and steady increase in the number and tonnage of vessels using the Straits, casualty rates have declined considerably recently, from 27 major accidents in 1993 to 17 in 1994. Eleven of them occurred prior to the new Regulations. In 1995, only four accidents took place in the Strait of Istanbul.

24. As for the issue of delays, the safe passage of a large vessel could be ensured by temporarily suspending the TSS and two-way traffic and instituting one-way traffic arrangements. This could only be accomplished by requiring waiting periods at the entrance to the Straits. In many instances, the vessels of the complaining States had to await the safe passage of vessels flying their own flag.

25. Having given this factual background on issues related to the Turkish Straits, I would now like to refer to the letter of Ambassador Lavrov of the Russian Federation, which was circulated as a document of the General Assembly (A/50/754) on 14 November 1995.

26. From the very beginning, the Russian side has attributed ill intentions to the Turkish side. These attributions are totally unfounded, all the more so in the light of the record of implementation. The Russian side appears, in words, to have a certain consideration for Turkey's concerns on issues of safety, yet acts with well-known political and economic motives, in total disregard of these legitimate concerns.

27. The letter presents a totally distorted view of the Maritime Traffic Regulations introduced by Turkey on 1 July 1994. By using very condensed and vague language, it intends to mislead those who are not very familiar with the issues involved.

28. Information requested for large vessels is simply necessary for scheduling the passage of such vessels in an orderly manner. In addition, the relevant provision of the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal has in fact been reflected in the Regulations. Furthermore, provisions of such international conventions as the Convention on the International Regulations for Preventing Collisions at Sea and the International Convention for the Safety of Life at Sea (SOLAS) have also been duly and adequately reflected in the Regulations.

29. There are no categorical restrictions in the Regulations for any type of vessel that is capable of passing safely through the Straits. But, for example, vessels not under command or restricted in their ability to manoeuvre could hardly be exempt in the Straits from the rules which are internationally deemed as necessary for the safety of navigation in other bodies of sea. Also, passage of vessels with an air draught above a certain height is physically constrained owing to the presence of two bridges in Istanbul.

30. Suspension of traffic exceptionally for brief periods such as for compulsory cases, and on reasonable grounds, is a necessity. As an example, a need may arise for laying sewage pipelines by the Municipality. In fact, the last time, a similar task was carried out by using a Russian vessel.

31. Vessels with air draught of between 54 and 58 metres will need to be escorted by tugboats to ensure that such vessels remain on course while passing under the two bridges, since the heights of the bridges are not uniform over their arches. Even a slight deviation of such a vessel would cause a collision. For the same reason and as is also stipulated in item 5 of the IMO rules, a vessel under tow may only pass through the Straits when being towed by a suitable tugboat of sufficient strength.

32. The basic information requested on the vessel and its cargo is required only for the purposes of managing the traffic flow efficiently and taking any measures that may be needed, such as suspending two-way traffic and regulating one-way traffic. Furthermore, items 1 and 2 of the IMO rules strongly recommend participation in this reporting system. In addition, in article 2 of the

Montreux Convention communication to the coastal State of information concerning name, nationality, tonnage, destination and last port of call is also provided for.

33. Any misunderstanding as to whether the definition of "vessels" includes warships has been sufficiently addressed in a note given to the Russian Federation and other interested parties who made such a request. Thus, the issue of which articles of the Regulations pertain to military vessels has been clarified. Hence, the terms of the Montreux Convention are totally upheld. Also, the principle of sovereign immunity and the precepts of international law concerning vessels of war are naturally unaffected. However, in the interest of safety of navigation, call point reports are highly appreciated.

34. The eighth and ninth paragraphs of the document (ibid., annex) are also replete with errors and distortions.

35. No "Turkish proposals" were declined in the May 1994 meeting of the IMO Maritime Safety Committee. The Russian side insists on confusing an explanatory note which had been presented by Turkey, with the draft rules and recommendations that were actually discussed and adopted by the MSC. In fact, the Turkish delegation actively contributed to the preparation of these rules, which in no way contradict or restrict the regulations.

36. The reference to the Black Sea Economic Cooperation Working Group on Transit is not relevant since the Regulations do not contradict the 1936 Montreux Convention.

37. In conclusion, the only constructive approach to the solution of the problem of ensuring the safety of navigation in the Straits is to abide by the rules and regulations in effect. Indeed, the traffic in the Straits is too dense and the risks involved are too high to allow for an "à-la-carte" usage. Moreover, not only the coastal State but also each of the user States has a vested interest in a managed passage in conformity with recent developments of international law and practice.

38. Turkey is and has always been receptive to suggestions for bilateral review of any complaints concerning the implementation of the Regulations. However, Turkey would be rather reluctant to enter into a debate with parties that choose to adopt confrontational approaches on this issue in international forums.

39. With these considerations in mind, I should also emphasize that the General Assembly of the United Nations is not the right forum to handle this purely technical issue.